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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COLLETTE RAYMOND, Plaintiff and Appellant, v. COUNTRYWIDE HOME LOANS, INC. et al., Defendants and Respondents.	E047941 (Super.Ct.No. INC054001) OPINION

APPEAL from the Superior Court of Riverside County. Harold W. Hopp, Judge. Affirmed.

Mike Pincher for Plaintiff and Appellant.

Rutter Hobbs & Davidoff Incorporated, Frank E. Melton and Wendy E. Lane for Defendant and Respondent Ira Meltzer.

Seyfarth Shaw, Ann Kotlarski and Catherine A. Evans for Defendants and Respondents Countrywide Home Loans, Inc., Paul Hiller and Denise Goodman.

I. Introduction

Collette Raymond filed a wrongful termination action against Countrywide Home Loans[1] in October 2005. After an arbitrator ruled against her, she filed the instant appeal, claiming the superior court erred by granting Countrywide's petitions to compel arbitration and to confirm the arbitration award, and denying Raymond's motion to vacate the arbitration award.

The parties have not supplied this court with a record of the arbitration hearing.[2] But, based on our de novo review and with deference to the findings made in the arbitration award, we affirm the judgment. (*Swab Financial v. E*Trade Securities, LLC* (2007) 150 Cal.App.4th 1181, 1198; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [judgments below are presumed correct.])

II. Factual and Procedural Background

Raymond's second amended complaint alleges 11 causes of action for statutory and promissory fraud, breach of written contract, statutory violations of equal pay, sexual discrimination and harassment, disability discrimination, intentional infliction of emotional distress, unlawful discharge, and negligent and intentional interference with prospective economic advantage.

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[1] Our reference to Countrywide is intended to refer collectively to all defendants, including the three individuals, Ira Meltzer, Paul Hiller, and Denise Goodman.

[2] Raymond claims the JAMS (formerly Judicial Arbitration and Mediation Services) file was inadvertently destroyed by JAMS. To the extent the JAMS file may be recoverable from the parties' files, Raymond asserts it is not necessary or it is irrelevant.

Our recitation of the facts is primarily based on the findings made in the final award of the arbitrator. The arbitration hearing was conducted during 17 or 19 days between May and December 2007 by David Perez, a retired superior court judge with JAMS. Twenty-two witnesses offered testimony. In brief, Raymond claims she was mistreated by Countrywide when she relocated from Orange County to Palm Desert to work for Ira Meltzer.

Beginning in 1989, Raymond was employed by Countrywide as a loan originator/processor. In December 2003, she changed job locations from Santa Ana to Palm Desert when Meltzer hired her to work as an external home loan consultant on construction loans.

According to Meltzer and a Countrywide loan officer, Paul Hiller, Raymond was not a successful loan originator because she was misleading and unpredictable with potential borrowers. Instead, she worked as a loan processor and was paid $6,000 a month, plus a monthly bonus.

Hiller admitted that in 2004, at Raymond's request, he notarized the Bouchard loan documents without the borrower being present. He was subsequently placed on administrative leave and his employment was terminated on September 22, 2004.

Raymond denied asking Hiller to notarize the Bouchard loan. Instead, Raymond maintained she had complained about Hiller's improper notary practices and asked for a transfer. In September 2004, she took a medical leave and she was also placed on administrative leave. She applied for a job with Wells Fargo but did not accept it before

Countrywide fired her in October 2004. She accused Meltzer and Hiller of sexual harassment, which they denied.

Denise Goodman, the Palm Desert branch manager, testified that Raymond was hired as a loan processor and originator but Hiller was better at originations and Raymond was better at processing. Goodman was present when a fraud investigator interviewed Hiller and Raymond about the Bouchard loan. Goodman confirmed Hiller's statement that Raymond had asked him to notarize the loan. Raymond changed her story about what had occurred. Raymond never complained to Goodman about Hiller's notary practices or about sexual harassment by Meltzer or Hiller.

Another Countrywide employee, Kee Chan, claimed Raymond had accepted a position with Wells Fargo. Jody Skossberg, the leave-of-absence coordinator, testified she talked to Raymond and, after confirming Raymond was resigning to take a job with Wells Fargo, Skossberg processed Raymond's resignation.

The arbitrator found that Raymond's testimony about the Bouchard loan was not credible. He also found that she had accepted a job with Wells Fargo and was not fired by Countrywide. The arbitrator ruled in favor of Countrywide.

III. Analysis

Raymond offers a somewhat disjointed mélange of arguments on appeal. She asserts the arbitration award is subject to judicial review for legal error. She contends the arbitrator's final award was inadequate because it did not address every issue she deemed material. Raymond also protests that the arbitrator demonstrated bias and prejudice for a multitude of reasons, again including his purported failure to render an adequate decision.

Next Raymond complains the arbitration involved too many hearings conducted over too many months, causing her further prejudice. Finally, Raymond objects to the enforceability of the arbitration clause.

A. Legal Error

As a general principle guiding our analysis, we acknowledge that "the scope of judicial review of arbitration awards is extremely narrow." (*California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 943; *Pearson Dental Supplies, Inc. v. Superior Court* (4/26/10) 2010 DJDAR 6080.) The subject arbitration agreement, however, provides for judicial review of legal error: "The arbitrator's decision shall be final and binding upon the parties except that both parties shall have the right to appeal to appropriate court with jurisdiction errors of law in the decision rendered by the arbitrator." An express agreement of this type generally permits judicial review. (*Christensen v. Smith* (2009) 171 Cal.App.4th 931, 936, citing *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1345 (*DirecTV*).) On the other hand, because the subject arbitration agreement is also subject to the Federal Arbitration Act, the arbitrator's decision may not be subject to judicial review for legal error. (*Christensen, supra,* at pp. 937-938, citing *Hall Street Associates, L.L.C. v. Mattel, Inc.* (2008) 542 U.S. 576 [128 S.Ct. 1396, 170 L.Ed.2d 254].)

Notwithstanding this possible conflict about the availability of review, Raymond does not identify any legal error by the arbitrator except for his purported failure to render an adequate decision, an issue which we address below. With that exception, we

otherwise decline to consider Raymond's unsubstantiated claim of legal error. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 79, 106.)

B. Adequacy of the Arbitration Award

The arbitrator, Perez, issued a 19-page final award in which he spent four pages summarizing the procedural posture of the case and Raymond's claims. He also made 10 pages of factual findings based on the testimony of the 22 witnesses, followed by several more pages of findings.

Nevertheless, Raymond repeatedly challenges the arbitrator's award for failing to state reasons for the decision. Raymond relies on a line of cases holding that Code of Civil Procedure section 1283.4 requires that an arbitration award must "'include a determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy.' The determination of which issues are actually necessary to the ultimate decision is a question of fact to be resolved by the arbitrator. (*United Food & Commercial Workers Union v. Clougherty Packing Co.* (1984) 154 Cal.App.3d 282, 288-289.) 'It has been held that where the record shows that an issue has been submitted to an arbitrator and that he totally failed to consider it, such failure may constitute "other conduct of the arbitrators contrary to the provisions of this title" justifying vacation of the award under [Code of Civil Procedure] section 1286.2, subdivision (e). [Citations.]' (*Rodrigues v. Keller* [(1980) 113 Cal.App.3d 838,] 841.)" (*Rosenquist v. Haralambides* (1987) 192 Cal.App.3d 62, 68.) As further clarified by the California Supreme Court, "All we hold today is that in order for such judicial review to be successfully accomplished, an arbitrator in a FEHA case must issue a written

arbitration decision that will reveal, however briefly, the essential findings and conclusions on which the award is based." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 107.)

Raymond argues the arbitrator should have more fully addressed every single point she raised. We disagree. As the foregoing establishes, the arbitrator decides what issues are necessary to be resolved. The arbitrator's decision, even if brief, is dispositive unless he totally failed to consider an issue. In the present case, Perez rendered a detailed decision that considered all the relevant issues. Raymond's dissatisfaction with the outcome, however, does not render it invalid. (*Luster v. Collins* (1993) 15 Cal.App.4th 1338, 1344-1345.)

C. Bias or Prejudice

An arbitrator's failure to disclose information indicative of bias may constitute grounds to vacate the award either under Code of Civil Procedure section 1286.2, subdivision (a)(1) ("award was procured by corruption, fraud or other undue means"), or Code of Civil Procedure section 1286.2, subdivision (a)(2) ("corruption in any of the arbitrators"). "Whether an award is tainted by bias because an arbitrator failed to disclose a particular relationship is a factual determination made by the court reviewing the award. [Citation.] The party claiming bias bears the burden of establishing facts supporting its position. [Citation.] The test is objective, i.e., whether the relationship would create an impression of bias in the mind of a reasonable person. [Citation.]" (*Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1370-1371.)

In a highly discursive argument we have difficulty understanding, Raymond contends the arbitrator was biased or prejudiced because he did not correctly assess her credibility or the credibility of the witnesses. Neither the trial court nor the appellate court may review the credibility of witnesses, the conflicts in the evidence, the merits of the controversy, the validity of the arbitrator's reasoning, or the sufficiency of the evidence supporting an arbitrator's award. (*Christensen v. Smith, supra,* 171 Cal.App.4th at p. 936, fn. 4; *Luster v. Collins, supra,* 15 Cal.App.4th at p. 1344.) The arbitrator's findings about credibility cannot offer evidence of bias. (*Andrews v. Agricultural Labor Relations Board* (1981) 28 Cal.3d 781,795-796.)

Other examples of purported bias involve Raymond's complaints about how the arbitrator handled discovery disputes, the briefing schedule for a summary judgment motion that was never filed, and other scheduling issues. Raymond has not supplied this court with an adequate record allowing us to evaluate these inchoate claims of error. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575; *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, citing *Cucinella v. Weston Biscuit Co.* (1954) 42 Cal.2d 71, 83.)

Furthermore, nothing offered by Raymond remotely indicated bias or prejudice on the part of the arbitrator : "To support a claim of bias, a party must demonstrate the arbitrator had an interest in the subject matter of the arbitration or a preexisting business or social relationship with one of the parties which would color the arbitrator's judgment." (*Luster v. Collins, supra,* 15 Cal.App.4th at p. 1345; *Reed v. Mutual Service Corp., supra,* 106 Cal.App.4th at p. 1371.) No such demonstration was made here.

D. Arbitrability

Raymond's last set of arguments challenges the validity of the arbitration agreement. We agree with Countrywide's assertion that the subject arbitration agreement complies with the minimum requirements for a mandatory employment arbitration agreement, as described in *Armendariz v. Foundation Health Psychcare Services, Inc.*, *supra,* 24 Cal.4th at pp. 103-114 [limitation of remedies, adequate discovery, written award and judicial review, and no unreasonable costs or fees.]

We are not persuaded the agreement is unconscionable as adhesive because it did not require the arbitrator to have special training or because it included NAF[3] as one of the three choices for an arbitrator. In any event, the arbitrator in this case was a neutral retired judge working for JAMS, not someone lacking training or an NAF arbitrator. The agreement was also not unconscionable because it did not expressly allow lay witness testimony. Although the agreement specifically allowed expert testimony, lay testimony was not excluded and apparently was permitted without any restriction. Furthermore, it was not unconscionable to omit to attach to the arbitration agreement the rules of the arbitration providers unless there was some provision in those rules that could be considered unconscionable. (*Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1410.) Raymond does not identify any objectionable arbitration rules that would invalidate the subject agreement. Nor do her objections about the ultimate length of the arbitration serve as a separate reason to invalidate the agreement.

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[3] National Arbitration Forum.

Finally, we do not perceive there was any fraud in execution of the arbitration agreement based on possible conflicts in the law about whether the agreement is subject to judicial review as discussed above and in *Christensen v. Smith, supra,* 171 Cal.App.4th at pages 936-938, citing *DIRECTV, supra,* 44 Cal.4th at page 1345, and *Hall Street Associates, L.L.C. v. Mattel, Inc., supra,* 542 U.S. 576 [128 S.Ct. 1396, 170 L.Ed.2d 254].

IV. Disposition

We conclude the trial court properly granted Countrywide's petitions to compel arbitration and to confirm the arbitration award and properly denied Raymond's motions for reconsideration and to vacate the arbitration award. The foregoing resolves all issues on appeal, including the issues raised by Countrywide about the absence of personal liability for the individual defendants.

We affirm the judgment. Countrywide, as the prevailing party, shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2), and (5).)

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s/Richli
J.

We concur:

s/Hollenhorst
Acting P.J.

s/Miller
J.